



CPUC Implementation of AB 52 (Gatto, 2014)



Mary Jo Borak

***Program and Project Supervisor
Infrastructure Permitting and CEQA***

**California Public Utilities Commission
Committee on Policy and Governance**

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Historical Timeline

September 25, 2014: AB 52 (Gatto, 2014) approved by Governor Brown

July 1, 2015: AB 52 becomes effective and applies to any projects requiring an EIR or ND/MND filed after this date

October 21, 2015: CPUC included in Native American Heritage Commission (NAHC) list of lead agencies

July 1, 2016: Final AB 52 Guidance Issued

June, 2017: OPR issues Technical Advisory: AB 52 and Tribal Cultural Resources in CEQA





CPUC Practice Prior to AB 52 Passage

- The CPUC included tribes in the environmental review process by:
 - Requesting a contact list from NAHC of tribes that may have affiliation within a project area, and including tribes on mailing lists for projects
 - Encouraging Tribes to participate either as parties or by including comments on draft environmental documents (DEIR/DMND)
 - Following CEQA guidelines by having consulting archaeologists analyze impacts the project may have on cultural resources
 - Including a Cultural section and related mitigation measures in EIRs and ND/MNDs





AB 52 Timeline

If California Native American Tribe has sent in a request to be on Agency notification list*:

Project Application is deemed Complete

14 Days

Formal notice is provided to the Tribal contact

30 Days

Tribe contacts the lead agency requesting consultation

30 Days

Consultation begins between the lead agency and the Tribe

Ongoing

Consultation ends once:

- 1) Both parties agree upon mitigation measures, or
- 2) A Party (under good faith) concludes mutual agreement cannot be reached





Tribes who have sent letters requesting formal notification of projects within areas of potential tribal significance

- Cabazon Band of Mission Indians
- Colorado River Indian Tribes
- Federated Indians of Graton Rancheria
- Gabrielino Band of Mission Indians – Kizh Nation
- San Luis Rey Band of Mission Indians
- San Manuel Band of Mission Indians
- Temecula Band of Luiseno Mission Indians
- Torres Martinez Desert Cahuilla Indians
- Twenty-nine Palms Band of Mission Indians
- Sycuan Band of Kumeyaay
- Tejon Indian Tribe
- Pala Band of Mission Indians





Consultation Process

- Must be in good faith
- Ongoing process (no definitive timetable)
- May cover the type of environmental review needed (EIR vs ND/MND), potential alternatives, mitigation measures, significance of tribal cultural resources, and the impact the project may have on tribal cultural resources
- Must include specific issues the tribe requests to cover during consultation
- Must maintain confidentiality





Confidentiality

- CEQA environmental documents may not contain information about any info subject to disclosure restrictions under Public Records Act (archaeological sites, sacred sites, etc.)
- Any info submitted by a Tribe cannot be in an environmental document or disclosed to the public without prior written consent
- Info cannot be exchanged between Tribes without written consent
- Confidentiality does not apply to publicly available info and does not prohibit info from being confidentially exchanged between public agencies, or among the lead agency, Tribe, and project applicant





Consultation Results

- Lead agency staff must recommend for inclusion any agreed upon mitigation measures into the environmental document and mitigation monitoring
- If determined a project may have a significant impact on a tribal cultural resource, the environmental document must discuss whether the project has an impact on the cultural resource and whether feasible mitigation or alternatives exist that can avoid or lessen the impact
- Lead agency must still consider feasible mitigation measures to avoid damaging tribal cultural resources even if none are identified in the consultation process





Consultation Results

A lead agency may determine based on substantial evidence that a resource is a tribal cultural resource using the criteria to determine eligibility for listing in the California Register of Historical Places (Public Resource Code section 5024.1(c))





Thank you!
For Additional Information:
www.cpuc.ca.gov

